

BROWN GAVALAS & FROMM LLP
Attorneys for Plaintiff
DEVAL DENIZCILIK VE TICARET A.S.
355 Lexington Avenue
New York, New York 10017
Tel: (212) 983-8500
Fax: (212) 983-5946

JUDOE KAPLAN

09 CIV 7314

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

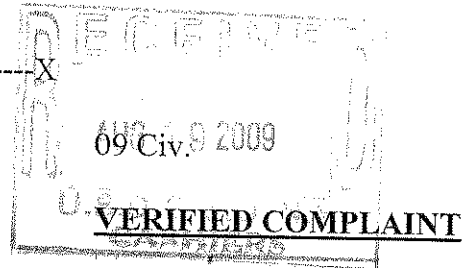
-----X
DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

SENSY FREIGHT SRL,

Defendant.
-----X



Plaintiff, DEVAL DENIZCILIK VE TICARET A.S. ("Plaintiff"), by its attorneys, Brown Gavalas & Fromm LLP, as and for its Verified Complaint against defendant SENSY FREIGHT SRL ("Defendant"), alleges upon information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. The Court has jurisdiction under 28 U.S.C. § 1333.
2. At all material times, Plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of the Republic of Turkey, with an office and place of business at F. Kerim Gokay Caddesi, Denizciler Is Merkezi, B-Blok, No. 14, Istanbul, Turkey.
3. Upon information and belief, at all material times Defendant was and still is a foreign corporation organized and existing under and by virtue of the laws of a foreign country, with an office and place of business at Avenida Ana Costa 222, Millennium Tower, Cj 82 CEP

11060-000, Santos, SP, Brazil.

4. At all material times, Plaintiff was the registered owner of the motor vessel BAKU ("the Vessel").

5. On or about July 10, 2009, Plaintiff, as owner, and Defendant, as charterer, entered into an agreement whereby Plaintiff agreed to let and Defendant agreed to hire the Vessel to transport a "full and complete cargo" of rice in bulk up to the capacity of the Vessel's holds in Plaintiff's option, for a single voyage from Rio Grande do Sul, Brazil to Puerto Cabello, Venezuela, at a freight rate of \$29.00 per metric ton ("the Charterparty"). A copy of the Charterparty is annexed hereto as Exhibit "A".

6. The Vessel has a grain capacity of 759,474 cubic feet, as provided for in Clause 28 of the Charterparty. The Vessel, therefore, is capable of loading 16,886.20 metric tons at a rate of \$29.00 per metric ton of the bulk rice cargo.

7. Plaintiff duly delivered the Vessel to Defendant in accordance with the terms of the Charterparty, and Plaintiff has otherwise fully complied with its obligations under the Charterparty.

8. Despite due demand for performance, Defendant has failed to furnish any cargo to the Vessel and has failed to pay the required freight due under the Charterparty.

9. As a result of Defendant's breach of the Charterparty in failing to provide the minimum cargo required thereunder, Defendant owes Plaintiff freight in the amount of \$489,438.80, based on a quantity of 16,877.20 metric tons at \$29.00 per metric ton (16,877.20 mt x \$29.00 = \$489,438.80).

10. Under the terms of the Charterparty, all disputes between the parties are to be decided by arbitration in London, pursuant to English law. Plaintiff intends to commence

arbitration proceedings in London imminently.

11. This action is in aid of said London arbitration proceedings in accordance with 9 U.S.C. § 8. Plaintiff seeks to obtain adequate security to satisfy a potential London arbitration award in Plaintiff's favor.

12. In addition to recovering the principal amount due Plaintiff as stated in Paragraph 9 above, Plaintiff is seeking to secure legal costs and interest that may be awarded to Plaintiff as the prevailing party in the London arbitration proceedings. On the advice of E.G. Arghyrakis & Co., a firm of solicitors in London, legal costs and interest are recoverable in London arbitration. The power of the arbitrators to award costs derives from section 61 of the Arbitration Act 1996 which provides as follows:

61 Award of costs

- (1) The tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.
- (2) Unless the parties otherwise agree, the tribunal shall award costs on the general principle that costs should follow the event except where it appears to the tribunal that in the circumstances this is not appropriate in relation to the whole or part of the costs.

The power of the arbitrators to award interest derives from section 49 of the Arbitration Act 1996 which provides as follows:

49 Interest

- (1) The parties are free to agree on the powers of the tribunal as regards the award of interest.
- (2) Unless otherwise agreed by the parties the following provisions apply.
- (3) The tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case—
 - (a) on the whole or part of any amount awarded by the tribunal, in respect of any period up to the date of the award;

(b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.

(4) The tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs).

(5) References in this section to an amount awarded by the tribunal include an amount payable in consequence of a declaratory award by the tribunal.

(6) The above provisions do not affect any other power of the tribunal to award interest.

13. Plaintiff expects to recover the following amounts in the London arbitration:

a. On the principal claim	\$489,438.80
b. 2 years of interest at 6.75% per annum, compounded quarterly	\$70,111.27
c. Legal Costs (attorneys' fees, etc.)	\$91,605.47 ¹
TOTAL	\$651,155.54

14. Plaintiff has conducted an investigation as set out in the accompanying affidavit of Peter Skoufalos and Plaintiff verily believes that Defendant cannot be found within the District, within the meaning of Supplemental Rule B of the Federal Rules Civil Procedure.

15. Defendant is a trading company that ships commodities and other goods worldwide. In addition, Defendant charters vessels to transport its goods and to comply with obligations incurred by Defendant in sales contracts it enters into with other parties. Consequently, it is believed that Defendant will be making hire and/or freight payments to the

¹ This is based on estimated costs of a single arbitrator at £500.00/ day on the basis of a 5 day hearing, including writing the award; say £2,500.00. Costs of 2 witnesses attending London arbitrations (air fares and hotel accommodation) say £1,500.00 each; i.e. £3,000.00. Lawyer's costs, including submissions, witness statements, disclosure, reporting to clients, say at £265.00 per hour, i.e. £50,000.00. Total: £55,500.00 or \$91,605.47, based on a conversion rate of £1 = \$1.65055 (See <http://www.xe.com/ucc>).

owners of vessels chartered by Defendant. Further, Defendant will be receiving dollar-denominated payments for the products Defendant sells. Moreover, Defendant will likely be making dollar-denominated payments in payment of its commercial obligations.

16. It is the well-established custom and practice of the industry, that charter hire or freight paid by charterers for the charter of vessels, is payable in United States Dollars. In addition, bunker fuel for ships, which must often be paid for by the charterer, is customarily quoted and paid for in United States Dollars. Further, agents' invoices for services and disbursements rendered to vessels at local ports are customarily rendered and paid in United States Dollars.

17. Consequently, Defendant is believed to have or will have during the pendency of this action, assets within this District, specifically including cash, funds, freight, hire, accounts, electronic funds transfers and other property, in the hands of garnishees in the District including, but not limited to, Wachovia Bank, American Express Bank, Ltd.; ABN-AMRO Bank; Bank of Tokyo Mitsubishi UFJ Ltd.; Barclays Bank; Calyon; Standard Chartered PLC; HSBC Bank; Bank of America; BNP New York; Bank of New York; J.P. Morgan Chase; Deutsche Bank; Citibank; Mashreq Bank; Bank of China; and UBS AG, which are believed to be due or owing to the Defendant.

Plaintiff prays:

A. That process in due form of law according to the practice of this Court in admiralty and maritime jurisdiction issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Verified Complaint;

B. That because the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order

directing the Clerk of the Court to issue Process of Attachment and Garnishment, pursuant to Rule B of the Supplemental Admiralty Rules, attaching all cash, goods, chattels, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds held by any garnishee, including American Express Bank, Ltd.; ABN-AMRO Bank; Bank of Tokyo Mitsubishi UFJ Ltd.; Barclays Bank; Calyon; Standard Chartered PLC; HSBC Bank; Bank of America; BNP New York; Bank of New York; J.P. Morgan Chase; Deutsche Bank; Citibank; Mashreq Bank; Bank of China; UBS AG; and Wachovia Bank, which are due and owing to the Defendant, in the amount of \$651,155.54, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B, answer the matters alleged;


C. That this action be stayed and this Court retain jurisdiction over this matter through the entry of any judgment or award, and any appeals thereof; and

D. That Plaintiff have such other, further and different relief as this Court may deem just and proper.

Dated: New York, New York
August 19, 2009

BROWN GAVALAS & FROMM LLP
Attorneys for Plaintiff
DEVAL DENIZCILIK VE TICARET S.A.

By:


Peter Skoufalos (PS-0105)
355 Lexington Avenue
New York, New York 10017
Tel: (212) 983-8500
Fax: (212) 983-5946

VERIFICATION

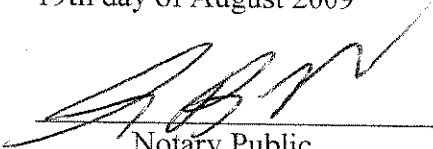
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

PETER SKOUFALOS, being duly sworn, deposes and says:

1. I am a member of the bar of this Honorable Court and of the firm of Brown Gavalas & Fromm LLP, attorneys for Plaintiff.
2. I have read the foregoing Verified Complaint and I believe the contents thereof are true.
3. The reason this Verification is made by deponent and not by Plaintiff is that Plaintiff is a foreign corporation, no officer or director of which is within this jurisdiction.
4. The sources of my information and belief are documents provided to me and statements made to me by representatives of the Plaintiff.


PETER SKOUFALOS

Sworn to before me this
19th day of August 2009


Notary Public

EVAN B. RUDNICKI
Notary Public of the State of New York
No. 02RU6142314
Qualified in Rockland County
Term Expires March 13, 2010

EXHIBIT “A”

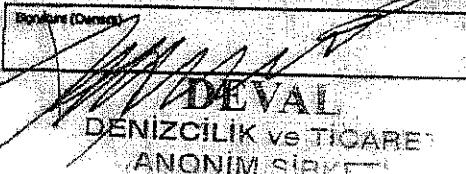
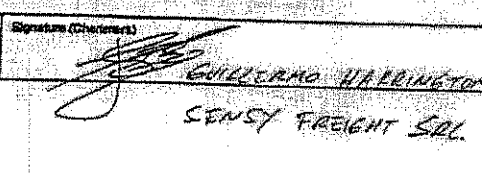
JUN-12-2009 05:07A DE:AMERICANA SHIPPING G 00541152582544

R:000902166510126

P:1

1. Shipowner LEVANT SHIPPING AND TRADING CO - ISTANBUL PM : 90 218 651 6128/27 FX : 90 218 651 6128 levant@levantshipping.com		RECOMMENDED THE BALTO AND INTERNATIONAL MARITIME COUNCIL UNIFORM GENERAL CHARTER (AS REVISED 1922, 1978 and 1994) (To be used for charterers for which no specially approved form is in force) CODE NAME: "GENCON", Part 1	
2. Place and date Istanbul 10.07.2009		4. Charterers/Place of business (CL 1) Messrs. SENSY FREIGHT SRL Av. Ana Costa 222, Millennium Tower, C) 82 CEP 11030-000 Santos, SP (5513) 7808-3769 C) Mr Guillermo Harrington	
3. Owners/Place of business (CL 1) Messrs. Deval Denizcilik ve Tic. a. s.		6. GRT/NET (CL 1) 12830/6789	
5. Vessel's name (CL 1) Mr Baku		8. Present position (CL 1) Trading	
7. DWT all told on summer load line in metric tons (abt.) (CL 1) 18,845 on 10.05 m swad		11. Discharging port or place (CL 1) Puerto Cabello 1 gbp/assa	
9. Expected ready to load (abt.) (CL 1) 22 nd July 2009		12. Cargo (also state quantity and margin in Owners' option, if agreed; if full and complete cargo not agreed state "part cargo") (CL 1) Upto full and complete cargo capacity of the v/s's holds in owners' option rice in bulk max stowing factor 45' onboard	
10. Loading port or place (CL 1) Rio Grande do sul 1 gbp/assa		13. Freight rates (also state whether freight prepaid or payable on delivery) (CL 4) Used 29.- pmt FIOT bas Free d/a at loading port	
15. State if vessel's cargo handling gear shall not be used (CL 5)		14. Freight payment (state currency and method of payment; also bank account) (CL 4) Freight payable w/ 2 banking days after signing Bills of Lading marked "Not" and "not payable as per cp dtd."	
17. Shippers/Place of business (CL 6)		16. Laytime (if separate laytime for load, and discharge, is agreed, fill in a) and b). If total laytime for load, and discharge, fill in c) only) (CL 8) (a) Laytime for loading 8,000 mts per working day of 24 consec hrs w/ Sundays holidays including	
18. Agents (loading) (CL 8) To be nominated by the charterers		(b) Lay-time for discharging 7,000 mts per working day of 24 consec hrs w/ Sundays holidays excluded time between Sat 12:00 mon 06:00 hrs not to count unless used, if used actual working time used to count	
19. Agents (discharging) (CL 8) To be nominated by the owners		(c) Total lay-time for loading and discharging	
20. Demurrage rate and number payable (loading and discharging) (CL 7) Used 13,000 pdp/rd bands		21. Cancellation date (CL 9) 27 th July 2009	
23. Freight Tare (state if for Owners' account) (CL 13 (c))		22. General Average to be adjusted at (CL 12) London	
25. Law and Arbitration (Note 12(a), 12(b) or 12(c) of CL 15; if 12(a) agreed also state Place of Arbitration; if not used by 12(a) which apply) (CL 15) In London as per English law to apply		24. Brokerage commission and to whom payable (CL 16) 2.50 % to Americana shipping group srl for division	
(d) State maximum amount for small claims/shorthern arbitration (CL 11)		26. Additional clauses covering special provisions, if agreed Clauses 20 to 28 (both included) as attached hereto are fully incorporated in this cp	

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter Party which shall include Part I as well as Part II, in the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owner)  DEVAL DENİZCİLİK VE TİCARET ANONİM ŞİRKETİ	Signature (Charterers)  GUILLERMO HARRINGTON SENSY FREIGHT SRL
---	---



16. Answer: 16. Answer:

ChemGrowth®

In every case the Owners shall appoint a Shipping Agent at the port of loading and the port of discharge to be nominated by the owners.

IL-Prozess

A brokerage commission at the rate stated in Box 24, on the freight less freight and demurrage earned is due to the party mentioned in Box 24.

12. Chemical Writing Clues

[illegible][illegible]

Exercises:

1. The Commission has received information that the following individuals have been identified as being involved in the activities of the Communist Party, U.S.A., and its front organizations, and are being considered for removal from the U.S. Government and its agencies:

17. Dear Reader (Voyager 1983)

(1) For the purpose of this Claim, the search

(e) The "Owner" shall include the shipowners, bareboat charterers, charterers, managers or other operators who are engaged with the management of the vessel and the crew.

[illegible][illegible][illegible][illegible]

time percentage of the freight transported is, as the percentage which the
 entire distance represents to the distance of the actual haul.

(S) The vessel that have been

[illegible]

(f) to comply with the orders, directions or recommendations of any war risk underwriter who have the authority to give the same under the terms of the war risk insurance;

(c) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the directives or any other supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the terms to which the Officers are subject, and to carry out the orders and directions of those who are charged with their enforcement.

(d) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation or a contraband claim;

persons on board the vessel when there is reason to believe that they may be subject to internment, imprisonment or other restrictions.

Where cargo has not been loaded or has been discharged by the Owners under any provisions of this Charter to load other cargo for the Owners' own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the original customary route.

It is compliance with any of the provisions of sub-clauses (2) to (5) of the Clause, anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Contract of Carriage.

12. General Ion Charge

Post of loading

(a) In the event of the loading and lashing instructions for reasons of ice when the vessel is ready to proceed from her last port of call any time during the voyage or on the vessel's arrival, or in case of fire, sink or other disaster the voyage or charter for fear of having broken it is in whole or in part without cargo, and the Charter Party shall be null and void.

to proceed to any other port or place with intent to discharge cargo there loaded under the Charter Party to be forwarded to destination at the Charterer's expense but without prejudice to freight, provided that no cargo delivered in proportion to the Charterers' freight being paid or quantity Party.

(c) In case of more than one loading port, and if one or more of the ports are closed by law, the Master or the Charterer to be at liberty either to load the part cargo at the open port, and to sign bills of lading for their own account, or under agree to load full cargo at the open port.

(k) Should the Vessel from reaching port or discharge the
 Owners shall have the option of towing the Vessel to the
 nearest port of refuge and paying demurrage or of ordering the Vessel to be
 towed to the nearest port of refuge and paying demurrage without any
 obligation to the Charterers. The Charterers shall be liable for the cost of
 towing the Vessel to the nearest port of refuge and for the cost of
 discharge of the cargo at the nearest port of refuge.

[illegible]

2. Law and Arbitration

[illegible][illegible]

1. The Plaintiff has also been arrested and convicted of numerous offenses under the laws of the State of New York, including but not limited to, the following:

~~For [redacted] when the [redacted] was [redacted] in [redacted] and [redacted] was [redacted]~~

(c) // Box 25 in Part I be sent to the Chairman of the Party.

a), (b) and (c) are alternatives; whichever alternative agreed in Box 25.

the other provisions of this Agreement shall have full force and remain in effect.

1. *Journal of Management Studies*, 1996, 33, 1, 1-14.

DEVAL
DENİZCİLİK ve TİCARET
ANONİM ŞİRKETİ

10TH July 2009

Clause 20 - The Bsl to be marked "Said to be/Said to weigh"

Clause 21 - Vessel to supply lights as onboard day and night, if required, free of any expenses to the Charterers.

Clause 22 - Opening and closing of Hatches to be performed by the vessel's crew, if permitted by shore regulations. Time used for, not to count as lay time.

Clause 23 - Overtime to be for the account of party ordering same, however, Officers and Crews overtime always to be for Owners account.

Clause 24 - Vessel to give on fixing 48, 24 and 12 hours definite notice of vessels arrival at the loading and discharging port agents and Charterers.

Clause 25 - BIMCO ISPS clause + New both to blame collusion clause + General average + New Jason Clause + General Paramount Clause + Hauge/Hauge Visby Rules are deemed to be incorporated in this Charter party

Clause 26 - This Charter Party to be kept strictly confidential.

Clause 27 - Bimco ISPS cls to apply

Clause 28 - Vessels description:

- MV 'HARU'
 BUILT 2001 - MULTI PURPOSE - MID - GENERAL CARGO CARRIER
 ALL ICE CLASS C - CALL SIGN : TCDD 5 - GRT/NRT 12930/6769 SUMMER
 DWT 18,845 ON 10,05M DRAFT - TURKISH FLAG - P+I UK(BERMUDA) - ABS
 CLASS- L.O.A/BEAM/DEPTH M 165,5/23,05M/13,40M - STEELFOORED - CO2
 FITTED - ELECTRO HYDROLIC FOLDING TYPE HATCH COVERS- ALL AFT DECK
 CRANES 4 X 25 MTS (HEAVY LIFT 50 MTS BSS TWIN FOR NO NO 2/3 ONLY)
 HULL GRT/NRT 16497,03/13523,91 - BOW TRUSTER FITTED
 4 X BOLDS/7 X HATCHES DIMS : (ELECTRICAL VENTILATION)
 AT EACH HATCH COAMING THERE IS A LONGITUDINAL BEAM DIVIDING THE
 HATCHES IN THE MIDDLE EXCEPT HATCH COAMING NO 1.

NO.	NO.	LENGTH	GRAIN	BALE	HATCH SIZES
- 1	18.00 M	- 115.205/102.068	- 13.00 X 11.80 M		
- 2	31.00 M	- 243.410/238.757	- 25.60 X 7.80 M (EACH)		
- 3	28.00 M	- 230.504/225.721	- 25.60 X 7.80 M (EACH)		
- 4	21.00 M	- 170.355/167.217	- 19.20 X 7.80 M (EACH)		

 TOTAL GR/BL 759.474/733.784 CBFT

The Charterers

G. VILLERMO HARRINGTON

The Owners

DEVAL

DENIZCILIK VE TICARET